IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev. No.589 of 1992
Date of Decision:- 16.03.2007

Brij Lal ....Petitioner(s)

through
Mr.P.S.Bajwa, Advocate

vs.

State of Punjab ....Respondent(s)

through
Mr.B.S.Baath, AAG, Punjab.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

This revision petition is directed against the judgment and order dated 18.3.1992 passed by the Additional Chief Judicial Magistrate, Ludhiana, whereby the petitioner was held guilty under Section 9 of the Opium Act (in short the Act) and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- in default thereof he was directed to further undergo rigorous imprisonment for one month, as well as against the judgment dated 19.8.1992 passed by the learned Additional Sessions Judge, Ludhiana whereby the petitioner's appeal against the above-stated judgment and order of conviction and sentence, has been dismissed.

As per the prosecution case, the petitioner was found in possession of 6 Kgs. of opium on 29.12.1983 shortly before 2.15 P.M. at Dugri road, Ludhiana. The aforesaid recovery was effected by SI Harpal

Singh in the presence of two other police officials, namely, ASI Sohan Lal and ASI Harnek Singh, who had attested the seizure memo. Exhibit PA. The petitioner was formally arrested. Report of the Chemical Examiner was obtained who opined that the contraband recovered from the petitioner is opium.

In order to prove its case beyond any doubt, the prosecution examined ASI Sohan Lal as PW-1and SI Harpal Singh (PW-2). The report of the Chemical Examiner (Exhibit PH) and the affidavits of Head Constable Gurmail Singh and Constable Ravinder Singh (Exhibits PJ and PG respectively) were also relied upon. On a perusal of the impugned judgments, one finds that the statements of both the police officials have been consistent and have inspired confidence. The manner in which the petitioner was apprehended along with the contraband, appears to be truthful and except the minor discrepancies, nothing could be extracted from the depositions of PW-1 and PW-2.

On the other hand, the defence version which is primarily based upon the deposition of one Avtar Singh (DW-1) , an employee of the Telegraph Department and Smt.Raj Rani (DW-2) wife of the petitioner, has not been accepted by the Courts below for more than one good reason. Since the telegram allegedly sent by the petitioner's wife has not been proved on record in accordance with Section 11 of the Evidence Act, the Courts below have placed no reliance thereupon.

Since no case of either misreading of the evidence by the Courts below or perverse conclusion has been made out by the petitioner, no interference, in exercise of the revisional jurisdiction of this Court , is called for in the concurrent findings with regard to his guilt of committing offence

under Section 9 of the Act.

Faced with the situation, it is argued by learned counsel for the petitioner that out of the total sentence of one year, the petitioner has already undergone actual sentence in part thereof. It is argued that the petitioner has already faced a protracted trial. A positive stand has been taken that neither the petitioner is a previous convict nor had ever misused the concession of bail granted by this Court vide order dated September 1, 1992.

After hearing learned counsel for the parties, I am of the considered view that though no interference, in so far as the petitioner's conviction under Section 9 of the Act is concerned, is warranted, however, keeping in view the fact that the petitioner was released on bail about 15 years back and is not stated to have misused the said cocession and is not a previous convict, this revision petition is partly allowed to the extent that the impugned judgments are modified and the period of sentence is reduced to the extent of the period of sentence already undergone by the petitioner.

Disposed of.

March 16, 2007 **(SURYA KANT)**
poonam **JUDGE**